

Circuit Court for Prince George's County
Case No. CINA14-0009

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2678

September Term, 2016

IN RE: L.S.

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: September 5, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On February 12, 2014, the Circuit Court for Prince George’s County, sitting as a juvenile court, with the agreement of Libra S. (“Mother”), determined that then five-year-old L.S. (“the child”) was a child in need of assistance (“CINA”).¹ The court removed the child from Mother’s care, but in June 2014 it determined that the child’s permanency plan should be reunification with Mother.² The court maintained the permanency plan of reunification with Mother through permanency plan review hearings in November 2014, April 2015, August 2015, January 2016, and June 2016. The Prince George’s County Department of Social Services (“the Department”) subsequently recommended adding a concurrent plan of custody or guardianship to a non-relative. Following a January 19, 2017 permanency plan review hearing, the court added the Department’s recommended concurrent permanency plan, such that the child’s permanency plan was primarily reunification with Mother and concurrently custody or guardianship to a non-relative. Mother appealed, arguing that the court erred in adopting the concurrent permanency plan.

Preliminarily, the Department contends that we should dismiss Mother’s case as non-appealable. The Department asserts that the order from which Mother noted an appeal is not a final order, nor does it fit into a statutory exception for an appealable interlocutory order or the collateral order doctrine. *See* CJP §§ 12-301 & 12-303; *Len Stoler, Inc. v.*

¹ A CINA is a child “who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardians, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Maryland Code (1973, 2013 Repl. Vol., 2014 Suppl.), Courts & Judicial Proceedings Article (“CJP”), § 3-801(f).

² The child’s father was deported to Mexico shortly after the child’s birth and was not a participant in these proceedings. Accordingly, he is not a party to this appeal.

Wisner, 223 Md. App. 218, 225, *cert. denied*, 445 Md. 8 (2015) (discussing final judgment rule and permissible appealable orders).

We agree that the court’s January 19, 2017 order is not a final order. Section 12-303(3)(x) of the Courts & Judicial Proceedings Article, however, permits interlocutory appeals from orders “[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, **or changing the terms of such an order[.]**” (Emphasis added). In *In re Karl H.*, 394 Md. 402, 430 (2006), the Court of Appeals determined that an order setting a concurrent permanency plan of reunification and adoption was immediately appealable and advised that “the focus should be on whether the order and the extent to which that order changes the antecedent custody order. . . . If the change could deprive a parent of the fundamental right to care and custody of his or her child, whether immediately or in the future, the order is an appealable interlocutory order.” In this case, the court’s January 19, 2017 order changed the antecedent custody order and could deprive Mother of the custody of the child in the future. We, therefore, deny the Department’s motion to dismiss because Mother has noted a proper interlocutory appeal.

Turning to the merits of the appeal, Mother contends that the court erred in adopting the concurrent plan of custody to a non-relative because she was making progress toward the goal of reunification with the child. She maintains that the court impermissibly focused on her lack of stable housing as the primary reason for ordering the concurrent permanency plan. Furthermore, she contends that the court’s order promoted instability because the

child is emotionally bonded to Mother, wants to be returned to her care, and does not want to be in the permanent custody of her foster mother, Ms. R.

The Department maintains that the juvenile court properly considered the appropriate statutory factors and determined that the child’s best interests would be served by adding a concurrent permanency plan of custody by a non-relative. The Department contends that the court considered Mother’s lack of stable housing, as well as her history of mental health issues and substance abuse. Ultimately, the Department notes, throughout the history of this case, Mother has not resolved the underlying circumstances that led to the CINA determination, and the concurrent permanency plan promoted the long-term goal of stability for the child.

In reviewing cases concerning a permanency plan change, we apply three inter-related standards of review. *In re A.N.*, 226 Md. App. 283, 305-06 (2015). “First, when an appellate court scrutinizes factual findings, the clearly erroneous standard applies. Second, ‘if it appears that the [juvenile court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless.’” *Id.* at 306 (quoting *In re Shirley B.*, 419 Md. 1, 18 (2011)) (internal citations omitted). “Finally, when reviewing a juvenile court’s decision to modify the permanency plan for the children, this Court ‘must determine whether the court abused its discretion.’” *Id.* (quoting *Shirley B.*, 419 Md. at 19). A court abuses its discretion where “‘the decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *In re*

Adoption/Guardianship of Joshua M., 166 Md. App. 341, 351 (2005) (quoting *Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 43 (2005)). In this case, Mother challenges the court’s decision to modify the permanency plan, which we review for an abuse of discretion.

Maryland Code (1984, 2012 Repl. Vol.), Family Law Article (“F.L.”), § 5-525(f)(1) provides the statutory framework for a juvenile court’s consideration of permanency plans.³ In its written order adopting the concurrent permanency plan, the court stated that it considered the appropriate statutory factors and the numerous Department reports filed throughout the history of the case. The court found that the Department had provided appropriate services in an effort to bring about reunification of the child and Mother. Importantly, the court noted that Mother “struggled with her parenting skills and budgeting money.” Additionally, the court considered Mother’s history of drug abuse and relapses, her inability and/or unwillingness to find employment, and her difficulty in completing inpatient substance abuse treatment programs. The court remarked: “It is unclear if Mother will be able to handle parenting [the child] long-term and [the Department] is exploring other permanency options.” Moreover, the court considered Mother’s mental health

³ F.L. § 5-525(f)(1) provides that the juvenile court should primarily consider the “best interests of the child” and analyze the following factors: “the child’s ability to be safe and healthy in the home of the child’s parent;” “the child’s attachment and emotional ties to the child’s natural parents and siblings;” “the child’s emotional attachment to the child’s current caregiver and the caregiver’s family;” “the length of time the child has resided with the current caregiver;” “the potential emotional, developmental, and educational harm to the child if moved from the child’s current placement;” and “the potential harm to the child by remaining in State custody for an excessive period of time.”

evaluations and diagnoses and observed “that Mother will need a lot of support to parent the [child].”

The court clearly considered the appropriate statutory factors and determined it was in the child’s best interests to begin to plan for other long-term placement, as the need arose. The court recognized that the child is bonded with Mother and “is not interested in being adopted[.]” The court determined, however, that reunification “is taking longer than desired due to Mother’s mental health issues and substance abuse issues.” Indeed, the court recognized that the child had been in foster care for three years, and she was nearly nine-years-old at the time of the January 2017 hearing. After commenting on Mother’s housing difficulties, the court found that “[c]ustody to the [child]’s foster mother needs to be explored as well to keep the [child] from languishing in foster care. Custody is preferable to adoption given the efforts Mother has made and [the child]’s bond with Mother.” The court also noted that reunification was still preferable and may still occur. We do not perceive an abuse of discretion in the court’s decision to adopt the concurrent permanency plan.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY,
SITTING AS A JUVENILE COURT
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**